



For Immediate Release

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Supreme Court Orders Two Judges to Vacate Seats

(November 9, 2007, Anchorage, Alaska) - Today the Alaska Supreme Court issued a decision in the *State v. Jeffery* case and determined that Barrow Superior Court Judge Michael Jeffery and Anchorage District Court Judge Nancy Nolan should not have appeared on the 2004 General Election ballot for retention, and ordered them to “vacate their seats within ninety days after this decision takes effect per Appellate Rule 507(b)” [explained below*].

“There are clear requirements within the law setting out the filing requirements and deadlines for all candidates. The Division of Elections followed the law, and is pleased that the Alaska Supreme Court agreed,” said Division of Elections Director Whitney Brewster. “It is imperative that the Division enforce those requirements consistently in order to conduct fair elections.”

In 2004, a superior court judge, William Morse, granted a temporary restraining order and ordered the Division to put the names of Judges Jeffery and Nolan on the 2004 General Election ballot. Both judges were retained in the election. On July 28, 2005, Judge Morse issued a decision holding that the judges’ submission of retention information to the Alaska Judicial Council was a sufficient declaration of candidacy to meet the statutory requirements.

The Division of Elections appealed the decision to the Alaska Supreme Court, and today that court reversed the lower court’s decision.

The Supreme Court said that the statute governing declarations of candidacy is clear. Under Alaska law superior and district court judges up for retention must file a declaration of candidacy with the Director of Elections no later than August 1 before the general election (AS 15.35.070 and 15.35.110).

The Court also noted that both the Judicial Council and the Division of Elections had reminded the judges to file the declarations by August 1, and that the judges had acknowledged in the letters accompanying their late-filed declarations that they had overlooked the deadline. The court determined that the determination of the Division of Elections that the judges had failed to comply with the deadline was supported by the facts and had a reasonable basis in law.

The Alaska Constitution provides that, “[t]he office of any * * * superior court judge becomes vacant ninety days after the election at which he is rejected by a majority of those voting on the question, or for which he fails to file his declaration of candidacy to succeed himself.” A state statute applies the same language to district court judges, and the judges failed to timely file.

The decision was authored by Justice Eastaugh, joined in the majority by Justices Matthew and Carpeneti. Justice Fabe recused herself, and Justice Bryner dissented.

[*Under Rule 507(a), the decision takes effect on the day after the time for filing a petition for rehearing expires (within 10 days of the decision) if no timely petition for rehearing is filed; or on the day after the supreme court disposes of the case on rehearing, if a timely petition for rehearing is filed.]

Media inquiries should be directed to Whitney Brewster, Director, Alaska Division of Elections, at 375-6400.

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Kate Morgan
Special Assistant/Communications
Office of Lieutenant Governor Sean Parnell
907.269.7460 o
907.269.0263 f
907.727.1030 c